

Chairman Jones and members of the House Commerce Committee, thank you for holding this hearing on HB 4591. Rep. Schmidt, I want to personally thank you for your efforts to help me and for the passion you bring to assist hard working business owners in your district. My name is Dan Barcheski. I am a business owner, a job creator, and a taxpayer. I have worked and invested every penny I have over the last 20 years to build Axios, Inc. (Insert description of Axios)

I have paid my fair share to help our government function. I have given to countless charitable organizations. I have mentored young people and given back to my community. More than 4,000 workers depend on me for paychecks, health care, 401k, workers compensation insurance, vacation pay, and employee assistance.

Do I expect a medal or some sort of recognition for these efforts? No. I believe in an honest day's pay for an honest day's work. What I do expect is for the government to foster a culture of entrepreneurship and to allow businesses to grow and flourish so that people have good jobs and can provide for their families.

Unfortunately, I am here before you today because I am under attack by my government. I have been punished before proven guilty. I have been led through the ringer by an agency hell bent on destroying my business. I know this language is rather harsh and direct, but my story needs to be told and frankly, something needs to be done to help me and others like me.

I would like to give you a brief overview of the last four years of anguish that I have experienced at the hands of the Unemployment Agency. I have also brought my attorney with me this morning, Tom Hammerschmidt, and he can talk more about the legal process we have been through once my testimony is complete.

In the fall of 2004, the Federal Government passed new SUTA dumping regulations. Michigan followed in 2005 with an update to Michigan's SUTA laws. During the process to update Michigan's SUTA laws, the department wanted "client level" reporting versus the PEO entity rate reporting. We along with other PEO's opposed this because it weakens the "true employer status" of the PEO which would lead to other areas such as benefits, workers compensation and retirement plan issues and complications with IRS tax filings. We also oppose because it would create more internal manual operations for tax filings, payments, tracking, etc.

In January 2006, Kellie Haines, President of AXIOS, Inc. and a group of PEO's met in the Capital building with the unemployment agency and representatives from the Governor's office to discuss client level reporting. It was clear no one but the unemployment office wanted client level reporting. Within 4-6 weeks of the meeting at the Capital we received a notice of a SUTA

audit and also a notice of a U.S. Department of Labor 401K audit. We complied with both audits.

Soon after in March of 2006, the SUTA audit began. We were told by the auditor when he was at Axios and finished with the audit - "Everything is fine and you actually over paid by a small amount - you will get a refund."

We never heard back and when we inquired about the results and refund we were told it was completed and sent the "Detroit tax office for review". Things then went into a black hole - we heard nothing and never received a refund.

Nineteen months later in November 2007, AXIOS, Inc. received a letter from the State Unemployment Agency stating they are concerned with our company's compliance with "certain provisions" of the Michigan Employment Securities Act.

On November 29, 2007, AXIOS attended a conference call with Neil Zechman, Rodger Palm, Joe Mulligan, Tina Alegra and Cindy Coolidge from the Unemployment Insurance Agency. We discussed the letter and the nature of their concern. They basically told us:

- 1) They DO NOT believe we engaged in SUTA dumping and have done nothing fraudulent.
- 2) They just believe we have violated the "spirit" of the Unemployment Securities Act by doing business through separate corporations and paying unemployment contributions at different rates. They believe our companies should have a combined rate rather than individual rates. So they are "thinking" they are going to combine all entities and send us a determination letter of the rate. We told them we 100% disagree.

In January 2008, AXIOS received notices for each of entities that made absolutely no sense at all. They removed all wages and gave each entity penalties for "non-reporting" of wages and benefits. This was completely inaccurate - we have been 100% compliant with all reporting and payments of unemployment insurance for all entities.

At the request of Axios on January 23, 2008, a face to face meeting took place between Neil Zechman, Joe Mulligan and Rodger Palm and representatives of AXIOS. At that meeting they started by saying all of the determination letters we received the first week of January were incorrect. They should not be followed and the Agency would send out new rate determination letters for each entity. They did say they still believe our entities should be combined into 2 firms (1 rate for all PEO companies) and (1 rate for temporary staffing agencies). Again we completely disagree and told them we would dispute any change they propose.

They told us in the meeting they again believe many PEO's and construction companies are violating the "spirit" of the unemployment act by having separate legal entities. They also again told us they do not believe there was SUTA dumping going on and did not believe we did anything fraudulent.

To our horror in March 2008, AXIOS began receiving word from our employees that their UI payments are being denied or delayed because the state has shut down some of the unemployment accounts for the entities in which these people were employed. There were at least three cases where badly needed unemployment benefits for laid off employees were delayed nearly a month.

Again at Axios's request in June 2008, a conference call is called by Sen. Mark Jansen to inquire why the Agency collapsed rates without notice and are denying AXIOS employee's benefits. The agency admits to making a mistake in consolidating the Staffing and PEO companies into one entity and agrees to uncollapse all of them so that employees are not denied benefits.

Finally in July 2008, many months after the Agency shut down our unemployment accounts, two new determinations - assessments if you will - from the Agency are sent to AXIOS vaguely referencing violations of the law and indicating that the entities will be collapsed and AXIOS will be assessed nearly \$5 million dollars of taxes and penalties, nearly \$4 million dollars of which are interest and penalties.

Later that month, AXIOS files a redetermination request from the Agency within the 30 day timeframe required under Agency rules.

In the meantime, our bank paid a visit to my office to discuss our financial audit which included, of course, this outstanding issue and the small matter of \$5 million in taxes and penalties, an amount by the way, which would make us insolvent. The only way that I could keep the necessary finances to run my company was to agree to pay a significantly higher interest rate and fees and to put up personal assets, in the form of an unlimited guarantee, as collateral for the loans.

In May of this year, after nearly a year in limbo, the Agency offered a settlement to AXIOS that would have required us to admit to wrongdoing and submit to the consolidation of rates, in exchange for the complete waiving of all penalties and interest. We rejected the settlement. We have heard nothing from the Agency since, waiting when we will get our day in court.

As you can see, it has been a daily struggle to defend ourselves against an agency that seems to have little regard for how their actions impact a law abiding business owner. They say I violated the "spirit" of the law. They have left me in legal limbo for nearly two years. They have caused harm to unemployed workers that they are supposedly commissioned to protect. They are jeopardizing healthcare coverage for thousands of workers if they are successful in putting me out of business. I desperately need you to fix this injustice.

I want to make something very clear, HB 4951 does not in any way change the law regarding SUTA dumping or what constitutes inappropriate or illegal activity. It simply states that before they can unilaterally collapse multiple corporate entities and attempt to assess fines and penalties, they have to prove that there was wrongdoing, they cannot do so under the guise that we violated the "spirit" of the law. If a company is actively participating in illegal activity, then they should be punished under the SUTA statute.

Thank you again for your time this morning. I am passionate about this because I have spent my life building this company and the fact that an agency can punish me before they prove I have done anything wrong is nothing less than tragic. I am happy to answer any questions that you might have after Tom's testimony.